

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$1,030.06 for date of service 11/06/01.
- b. The request was received on 02/11/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60 and Letter Requesting Dispute Resolution dated 02/28/02
 - b. HCFA(s)
 - c. TWCC 62 forms
 - d. Medical Records
 - e. EOBs from other carriers
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC 60 and/or Response to a Request for Dispute Resolution dated 03/10/02
 - b. HCFA(s)
 - c. TWCC 62 form
 - d. Medical Records
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 03/04/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 03/05/02. The response from the insurance carrier was received in the Division on 03/11/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:
 - a. The Requestor asserts that charges were for facility fees not professional fees. The payment received only represents 33% of the total billed amount. Other workers' compensation carriers reimburse at 85-100%. Additional reimbursement is sought in the amount of \$1,030.06 for the date of service 11/06/01.
2. Respondent:
 - a. "Section 413.011(b) of the Labor Code requires that fees for medical services: (1) be fair and reasonable; (2) ensure the quality of medical care; (3) achieve effective medical cost control; (4) Not exceed the fee charged or paid for similar treatment of an individual; and (5) be based in part, on the increased security of payment afforded to providers by the Texas Workers' Compensation Act. No Medical Fee Guideline Maximum Allowable Reimbursement (MAR) applies to the services provided by the requestor. Per TWCC Rule 133.304(I) "When the insurance carrier pays a health care provider for treatment(s) and/or service(s) for which the Commission has not established a maximum allowable reimbursement, the insurance carrier shall: (1) develop and consistently apply a methodology to determine fair and reasonable amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement; (2) explain and document the method it used to calculate the rate of pay, and apply this method consistently.[sic]

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 11/06/01.
2. The provider billed \$1,538.71 for date of service 11/06/01.
3. The carrier paid \$508.65 for date of service 11/06/01.
4. The amount in dispute is \$1,030.06 for date of service 11/06/01.
5. The carrier denies additional reimbursement on the submitted EOB as "M-No MAR/ASC reimbursement is based on fees established to be fair and reasonable in your geographical area."

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier has submitted their methodology and though, the entire methodology may not necessarily be concurred in by the Medical Review Division, the requirements of the referenced Rule have been met.

The provider has submitted reimbursement data. The provider has submitted EOBs from other carriers that have the same ICD-9 code as the date of service in dispute. These EOBs indicate that the provider has received reimbursement from 85% to 100% of the billed amount.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that meets the requirements of Rule 133.304. The provider has submitted EOBs from other carriers in an effort to document fair and reasonable reimbursement. Regardless of the carrier’s methodology or response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight should be given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers’ compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 11th day of June 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division